

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ANTHONY DION MILLER,  
Booking #14702376,

Plaintiff,

vs.

UNNAMED,

Defendants.

Civil No. 15cv0097 WQH (NLS)

**ORDER DISMISSING CIVIL ACTION:**

**1) FOR FAILING TO PAY  
FILING FEES REQUIRED  
BY 28 U.S.C. § 1914(a) AND/OR  
FAILING TO FILE A MOTION TO  
PROCEED *IN FORMA PAUPERIS*  
PURSUANT TO 28 U.S.C. § 1915(a)**

**AND**

**2) FOR FAILING TO FILE A  
COMPLAINT THAT ALLEGES  
FEDERAL SUBJECT MATTER  
JURISDICTION PURSUANT  
TO FED.R.CIV.P. 3,  
FED.R.CIV.P. 8(a)(1)-(3) AND  
FED.R.CIV.P. 12(h)(3)**

Anthony Dion Miller (“Plaintiff”), a prisoner currently housed at San Diego County Sheriff’s Department’s George Bailey Detention Facility (“GBD”) in San Diego, California, and proceeding pro se, has filed a letter with the Court, which while not altogether clear, appears to include allegations that an unidentified GBD official violated his Eighth Amendment rights on January 6, 2015. *See* Doc. No. 1 at 1-2. Plaintiff asks for “forms as to how to file a complaint” regarding the incident. *Id.* at 2.

1       Because Plaintiff is proceeding without counsel, the Court has liberally construed  
 2 his letter as an attempt to commence a civil action, and has assigned it Civil Case No.  
 3 3:15-cv-00097-WQH-NLS. *See Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621,  
 4 623 (9th Cir. 1988) (where a plaintiff appears in propria persona, the Court must construe  
 5 his pleadings liberally and afford plaintiff any benefit of the doubt).

6 **I. FAILURE TO PAY FILING FEE OR REQUEST IFP STATUS**

7       However, all parties instituting any civil action, suit or proceeding in any district  
 8 court of the United States, except an application for writ of habeas corpus, must pay a  
 9 filing fee of \$400. *See 28 U.S.C. § 1914(a).*<sup>1</sup> An action may proceed despite a party's  
 10 failure to pay this filing fee only if the party is granted leave to proceed *in forma pauperis*  
 11 ("IFP") pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051  
 12 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

13       Plaintiff has not prepaid the \$400 in filing and administrative fees required to  
 14 commence a civil action, nor has he submitted a Motion to Proceed IFP in compliance  
 15 with 28 U.S.C. § 1915(a). Therefore, no civil action can yet proceed. *See 28 U.S.C.*  
 16 § 1914(a); *Andrews*, 493 F.3d at 1051.

17 **II. INITIAL REVIEW OF PLAINTIFF'S PLEADING**

18       "The first step in a civil action in a United States district court is the filing of [a]  
 19 complaint with the clerk or the judge." 4 Wright, Miller, Kane, Marcus & Steinman, FED.  
 20 PRAC. & PROC. CIV. § 1052 (3d ed. 2002 & Supp. 2014); FED.R.CIV.P. 3 ("A civil action  
 21 is commenced by filing a *complaint* with the court.") (emphasis added). Pursuant to  
 22 FED.R.CIV.P. 8(a), a complaint must contain: "(1) a short and plain statement of the  
 23 grounds for the court's jurisdiction," . . . (2) a short and plain statement showing that the  
 24 pleader is entitled to relief; and (3) a demand for the relief sought." FED.R.CIV.P. 8(a)(1)-(3).

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 27       <sup>1</sup> In addition to the \$350 statutory fee, all parties filing civil actions on or after  
 28 May 1, 2013, must pay an additional administrative fee of \$50. *See 28 U.S.C. § 1914(a),*  
 (b); Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, eff. May  
 1, 2013. However, the additional \$50 administrative fee is waived if the plaintiff is  
 granted leave to proceed IFP. *Id.*

1       Federal courts have limited jurisdiction, and limitations on the court's jurisdiction  
 2 "must neither be disregarded nor evaded." *Moore v. Maricopa County Sheriff's Office*,  
 3 657 F.3d 890, 894 (9th Cir. 2011) (citing *Owen Equip. & Erection Co. v. Kroger*, 437  
 4 U.S. 365, 374 (1978)). The Court must determine sua sponte whether it has subject  
 5 matter jurisdiction. *See Valdez v. Allstate Ins. Co.*, 372 F.3d 1115, 1116 (9th Cir. 2004).  
 6 *See also* FED.R.CIV.P. 12(h)(3) ("If the court determines at any time that it lacks  
 7 subject-matter jurisdiction, the court must dismiss the action.").

8       Here, while it appears from Plaintiff's letter that he may wish to file a civil rights  
 9 action against at least one GBD official, he does not currently allege subject matter  
 10 jurisdiction pursuant to 42 U.S.C. § 1983 or 28 U.S.C. § 1333(a)(3). *See Watson v.*  
 11 *Chessman*, 362 F. Supp. 2d 1190, 1194 (S.D. Cal. 2005) ("The court will not . . . infer  
 12 allegations supporting federal jurisdiction; federal subject matter [jurisdiction] must  
 13 always be affirmatively alleged."). Thus, because Plaintiff has not filed a complaint that  
 14 alleges federal jurisdiction or "states a claim to relief that is plausible on its face,"  
 15 *Ashcroft v. Iqbal*, U.S. 662, 678 (2009) (citation omitted), his case must be dismissed.  
 16 *See Hamilton v. Brown*, 630 F.3d 889, 892 n.3 (9th Cir. 2011) (noting court's obligation  
 17 under the Prison Litigation Reform Act to "review, before docketing or as soon thereafter  
 18 as practicable, any civil action brought by a prisoner seeking redress from a governmental  
 19 entity, officer or employee," and its requirement to dismiss complaints or any portion  
 20 thereof that are "frivolous, malicious, or fails to state a claim upon which relief may be  
 21 granted," or "seek[ing] monetary relief from a defendant who is immune" pursuant to 28  
 22 U.S.C. § 1915A(a), (b)).

23       Because Plaintiff is proceeding without counsel, however, and his letter indicates  
 24 his desire to initiate a civil rights action, the Court will sua sponte grant him an  
 25 opportunity to do so. As noted above, however, Plaintiff's Complaint must comply with  
 26 Federal Rule of Civil Procedure 8. "Each allegation [in a pleading] must be simple,  
 27 concise, and direct. No technical form is required." FED.R.CIV.P. 8(d)(1).

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1 Plaintiff is further cautioned that any complaint he files will be subject to an initial  
 2 *sua sponte* screening and that it will be dismissed pursuant to 28 U.S.C. § 1915A(b)  
 3 (because he is a prisoner) or 28 U.S.C. § 1915(e)(2) (if he files a motion to proceed IFP)  
 4 for failing to state a claim unless his pleading contains sufficient factual matter to show  
 5 that: (1) a right secured by the Constitution or laws of the United States was violated;  
 6 and (2) the alleged violation was committed by a person acting under color of state law.  
 7 *Campbell v. Washington Dep't of Soc. Servs.*, 671 F.3d 837, 842 n.5 (9th Cir. 2011).  
 8 “Because vicarious liability is inapplicable to . . . § 1983 suits,” he must also plead that  
 9 each Government-official defendant he wishes to sue, “through the official’s own  
 10 *individual* actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676 (emphasis  
 11 added).

12 “[A] complaint must contain sufficient factual matter, accepted as true, to state a  
 13 claim to relief that is plausible on its face.” *Id.* at 678. “Under this rule, a claim must  
 14 contain ‘more than labels and conclusions’ or a ‘formulaic recitation of the elements of  
 15 the cause of action.’” *Sheppard v. Evans & Assoc.*, 694 F.3d 1045, 1048 (9th Cir. 2012)  
 16 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To state an Eighth  
 17 Amendment claim, in particular, Plaintiff must allege facts sufficient to show that each  
 18 individual official he seeks to hold liable acted with “‘deliberate indifference’ to a  
 19 substantial risk of serious harm.” *Farmer v. Brennan*, 511 U.S. 825, 828-29 (1994)  
 20 (citations omitted).

21 **III. CONCLUSION AND ORDER**

22 For the reasons set forth above, the Court hereby:

23 (1) **DISMISSES** this action without prejudice for failing to pay the \$400 filing  
 24 fee required by 28 U.S.C. § 1914(a), failing to file a Motion to Proceed IFP pursuant to  
 25 28 U.S.C. § 1915(a), and failing to file a Complaint which alleges federal subject matter  
 26 jurisdiction pursuant to FED.R.CIV.P. 3, 8(a)(1)-(3), and 12(h)(3);

27 (2) **GRANTS** Plaintiff forty-five (45) days leave from the date of this Order to  
 28 re-open the case by: (a) prepaying the entire \$400 civil filing fee in full; **or**

1 (b) completing and filing a Motion to Proceed IFP which includes a certified copy of his  
2 trust account statement for the 6-month period preceding the filing of his Complaint, *see*  
3 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2(b); **and** (c) filing an Amended Complaint  
4 that conforms with Rule 8.

5 The Clerk of Court is further **ORDERED** to provide Plaintiff with this Court's:  
6 1) form "Motion and Declaration in Support of Motion to Proceed *In Forma Pauperis*"  
7 and, 2) form "Complaint under the Civil Rights Act pursuant to 42 U.S.C. § 1983" for  
8 Plaintiff's use and convenience. If Plaintiff chooses to proceed, he must title his pleading  
9 as his "Amended Complaint," include Civil Case No. 15cv0097 WQH (NLS) in its  
10 caption, and otherwise comply with FED.R.CIV.P. 10(a), by naming each individual party  
11 he wishes to sue.

12 If Plaintiff fails to comply within the time provided, this civil action will remain  
13 dismissed without prejudice for the reasons set forth in this Order and without any further  
14 action by the Court.

15 **IT IS SO ORDERED.**

16 DATED: March 12, 2015

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18 **WILLIAM Q. HAYES**  
United States District Judge

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